Testimony of Lawrence J. Beaser, Esq.
Chair, Philadelphia Bar Association Task Force on
Pennsylvania's Lobbying Disclosure Act
For Submission to the Lobbying Disclosure Regulations Committee
At Its Hearing Held On August 2, 2007

Chairman Mulle and Members of the Committee:

On behalf of the 13,000 members of the Philadelphia Bar Association, thank you for the opportunity to testify today at this important hearing.

My name is Larry Beaser. I am a partner in the law firm of Blank Rome LLP. I am testifying today on behalf of the Philadelphia Bar Association, with the authorization of our Chancellor Jane Dalton, in my capacity as Chair of the Philadelphia Bar Association's Task Force on Pennsylvania's Lobbying Disclosure Act.

By way of background, I have been involved in drafting and interpreting Pennsylvania statutes and regulations for many years.

In the 1970s, I served as Counsel to Governor Milton J. Shapp. As Governor Shapp's general counsel, I reviewed and drafted legislation and regulations, and was involved in both regulatory matters and in the Commonwealth's procurement process.

Since joining Blank Rome, I have been called upon by clients -- both government clients and those in the nonprofit and private sectors -- to draft legislation and proposals for changes in administrative regulations. Also, over the years, I have been significantly involved from time to time with state procurement issues.

My role normally is that of a legislative drafter and not a lobbyist, even under the new definition. However, there is no question that the expanded definitions in the Lobbying Disclosure Act may require me to register and report from time to time.

Since enactment of the Lobbying Disclosure Act, I have been called upon for a variety of clients, and for my law firm and its lobbying subsidiary, Blank Rome Government Relations LLC, to interpret and provide advice on compliance with the Act.

In addition, I have written and lectured to a variety of groups on the provisions of the new statute.

On behalf of the Philadelphia Bar Association, I want to begin by congratulating the Committee for its hard work under significant time pressure.

I also want to congratulate the Committee for the most open, transparent regulatory process I have ever seen. Posting revisions to the drafts after each Committee meeting, using the "track changes" feature in Microsoft Word, has been useful to those of us in the field.

Attached to my written testimony today, are a set of detailed comments on the Draft Regulations. In the short time available to me, I, of course, cannot cover all of the issues we have raised in the written comments.

In my testimony today, I want to focus on the need for clear, bright-line standards in the Regulations. I also want to urge the Committee to consider adding a significant number of practical examples to the Draft Regulations in order to make certain that the public is able to comply with the dictates of the Lobbying Disclosure Act practically, simply and without fear of running into traps for the unwary.

Let me begin with bright-line standards: The public and the individuals and entities subject to the detailed requirements of the Act need bright-line standards as to when individuals and entities are required to register and what they are required to report.

This is particularly important since the Act includes in the definition of "lobbying" many activities that have never before been considered "lobbying" in Pennsylvania.

Many individuals, including small business owners, employees of small and large nonprofit and for profit corporations, attorneys, engineers, architects, accountants and doctors will become "lobbyists" for the first time in Pennsylvania's history as they become involved in dealing with changes in regulations and in Commonwealth procurement activities. Since individuals who fail to register face the possibility of criminal charges, the need for bright-line standards is critical.

It is crucial that, for example, the small business owner who wants to do business with the Department of General Services can find out quickly, easily and comprehensively, whether his or her contacts with DGS will require that individual to register as a lobbyist.

It is equally important that an attorney in private practice, or her client who is a vice president of a bank, know exactly what discussions with personnel in the Department of Banking will require registration and reporting.

We urge that, as you continue your deliberations, you carefully scrutinize each part of the Draft Regulations from the perspective of these non-traditional "lobbyists."

We are concerned that, as drafted, the Draft Regulations do not set forth clearly the type of bright-line tests for registration and reporting that will make the Regulations truly user-friendly.

An example is the concept in Chapter 53 that "engaging a lobbyist for lobbying purposes" and "accepting an engagement to lobby" by themselves require registration. We believe these provisions of the Draft Regulations are contrary to the letter and spirit

of the Act, will be difficult to implement in the non-traditional lobbyist context and are the type of "trap for the unwary" that needs to be changed in the Draft Regulations.

To have "lobbying" there must be action taken to actually influence legislative action or administrative action. The Act's definition of "lobbying" begins by stating that it is "[a]n effort to influence legislative action or administrative action. . . ." Unless a step is taken to actually influence legislative action or administrative action there is no lobbying.

For direct communication, registration is not required unless there is some sort of actual contact (a communication) with a State official or employee, provided that the activity is not exempt from registration. Merely being retained as a lobbyist or lobbying firm, without additional action by someone, does not satisfy the statutory definition of "lobbying."

For indirect communication, there needs to be contact with a third party -- not just between the principal and the lobbyist. The definition of "indirect communication" includes the concept that some encouragement of "others" is necessary before an activity is "indirect communication."

Thus, the mere act of retaining an individual to lobby is not and cannot, by itself, trigger registration.

We urge the Committee to make the changes to resolve this issue and comply with the Act, as set out in our detailed comments.

In addition, we ask you to consider other portions of the Draft Regulations, particularly the chapters on reporting and exceptions, to make certain that the

Regulations contain the types of bright-line standards that will permit practical and easy compliance with the Act's provisions.

Along those lines, we urge the Committee to add significant numbers of practical examples to give guidance to the public as to when they need to register and what they need to report.

The General Assembly established this Committee to provide understandable, user-friendly regulations so that the public could comply with the new statute.

A series of practical examples would make practical, complete and timely compliance much easier.

We urge the Committee to include as many real life examples as possible directly in the Regulations. In our view, only in the most complicated and unusual circumstances should there ever be a need to ask for a State Ethics Commission opinion. The public should be able to easily determine even routine complicated factual situations directly from the Regulations.

We hope that this testimony and the written comments we are submitting today are helpful to the Committee, as it works to finalize the Draft Regulations.

Thank you again for the opportunity to testify you today.

The Philadelphia Bar Association would be happy to assist the Committee in any way you feel is appropriate.

I would be happy to answer any questions you may have.